

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY SCOTT PINION,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52177

FILED

DEC 17 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Timothy Scott Pinion's motion for sentence modification. Eighth Judicial District Court, Clark County; James A. Brennan, Judge.

On October 13, 2006, the district court convicted appellant, pursuant to a guilty plea, of burglary. The district court sentenced appellant to serve a term of 48 to 120 months in the Nevada State Prison. No direct appeal was taken.

On June 10, 2008, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. The district court denied the motion in a written order on June 23, 2008. This appeal followed.

In his motion, appellant claimed that his sentence was based on "materially factual misrepresentations" in the presentence investigative report. Specifically, the report indicated that appellant was convicted of "Attempted Armed Robbery" in South Carolina in 1987. In actuality, appellant contended that he was only convicted of "Attempted Strong Arm Robbery," and claimed that no weapons or violence were

involved in the conviction. He also claimed that the report wrongly stated that he had been convicted of "Burglary Habitual" in Texas in 1991, when he was actually convicted of "Burglary of a Habitation," and misstated a sentence for a separate Texas conviction of receiving stolen property as fifteen years, when he actually served less time. Appellant also asserted that the report listed the wrong social security number, misstated his history of military service, and erroneously stated that he had admitted to using cocaine and having a gambling problem. As a result of these errors, appellant contended that the judge made a number of derogatory comments at the sentencing hearing, referring to him as a "highly sophisticated and very technical criminal," and indicating that he "wished he could sentence the Defendant to life."

"[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."¹ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.²

Our review of the record on appeal reveals that while the presentence investigative report may have contained some factual errors, any misrepresentations did not work to the appellants "extreme detriment." Even if each of appellant's asserted factual errors is taken as true, he still had a lengthy history of prior convictions, including convictions for burglary, robbery, receiving stolen property, and burglary

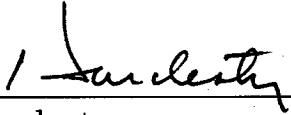
¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

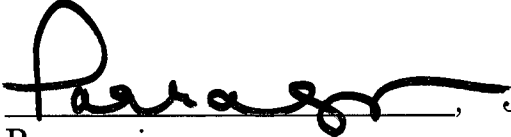
²Id. at 708-09 n.2, 918 P.2d at 325 n.2.

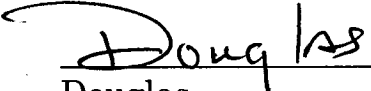
of a habitation. The sentence imposed by the district court was well within statutory sentencing guidelines.³ In addition, appellant admitted defense counsel informed the district court about inaccuracies in the presentence report multiple times, indicating that the district court was aware of these inaccuracies, and did not base its sentence on mistaken assumptions.

Therefore, having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

³See NRS 205.060(2) (providing that a person convicted of burglary “shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years”).

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Chief Judge, Eighth Judicial District
Hon. James A. Brennan, Senior Judge
Timothy Scott Pinion
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk